

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LINDA YOUNG,

Plaintiff,

v.

KNOWLEDGE LEARNING
CORPORATION,

Defendant.

CASE NO. C05-1740RSM

ORDER OF VOLUNTARY
DISMISSAL

This matter comes before the Court on defendant's motion for summary judgment and plaintiff's related motion for voluntary dismissal pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure. (Dkts. #7 and #10).

On September 14, 2005, plaintiff filed the instant lawsuit in the King County Superior Court, alleging that defendant had unlawfully denied her medical and dental benefits that were due to her under an existing employee benefit plan. (Dkt. #1). Defendant removed the action to this Court, asserting federal jurisdiction under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq.*, by which its benefit plan is governed. Defendant then filed its pending motion for summary judgment, arguing first that plaintiff has asserted state law claims, and those claims should be dismissed because they are preempted by ERISA, and

1 second, that in any event, plaintiff had been given the opportunity to enroll in its benefits
2 programs, but failed to enroll in such programs, and therefore, her claims are now precluded.

3 Plaintiff then filed a Motion for Voluntary Dismissal of her case. (Dkt. #10). In that
4 motion, plaintiff's counsel explains that plaintiff has moved out of state, he has been unable to
5 contact her, and she has failed to contact him, and therefore, he is unable to adequately prepare
6 a response to defendant's motion for summary judgment. Accordingly, he asks the Court to
7 grant voluntary dismissal of the action without prejudice.

8 Plaintiff also subsequently filed a response to defendant's motion for summary judgment.
9 (Dkt. #11). Plaintiff's counsel reiterates the reasoning behind his motion for voluntary dismissal,
10 and asks that the Court rule on that motion prior to making a ruling on the motion for summary
11 judgment.

12 Defendant has failed to respond to plaintiff's motion for voluntary dismissal. Defendant
13 has also declined to file a reply in support of its motion for summary judgment. Therefore, the
14 Court can only assume that defendant does not oppose voluntary dismissal. Accordingly, and in
15 the interest of judicial economy, the Court will resolve both pending motions in this Order.

16 Having reviewed defendant's Motion for Summary Judgment, plaintiff's Motion for
17 Voluntary Dismissal, plaintiff's response to the motion to dismiss, and the remainder of the
18 record, the Court does hereby find and ORDER:

19 (1) Plaintiff's Motion for Voluntary Dismissal (Dkt. #10) is GRANTED, and this case is
20 DISMISSED without prejudice. The Court finds good cause for the dismissal, and defendant
21 has provided no legal argument or authority to the contrary. This District's local rules state that
22 "[i]f a party fails to file papers in opposition to a motion, such failure may be considered by the
23 court as an admission that the motion has merit." Local Rule CR 7(b)(2). Having reviewed the
24 record in this case, the Court finds no reason not to apply this rule.

1 (2) Having determined that voluntary dismissal is appropriate in this case, the Court finds
2 that defendant's Motion for Summary Judgment (Dkt. #7) is now moot.

3 (3) The Clerk is directed to forward a copy of this Order to all counsel of record.

4 DATED this 17 day of January 2006.

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6 RICARDO S. MARTINEZ
7 UNITED STATES DISTRICT JUDGE
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